



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

September 13, 2007
CERTIFIED MAIL

Richard McMillen
Zillah Prairie, LLC
4319 W Dravus Street
Seattle, WA 98199

RE: Order # - 5117 Water Quality Certification for Zillah Lakes Planned Unit Development
and Golf Course

Dear Mr. McMillen:

The request for certification for proposed work in wetlands and lands adjacent to Buena and Konewock ditches, tributary to the Yakima River has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Catherine Reed at (509) 575-2616. Written comments can be sent to her at the Department of Ecology, Central Regional Office or at craj461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeff Lewis, Section Manager
Shorelands and Environmental Assistance Program

CR:jt070909

Enclosure

cc: Corps of Engineers – Joe Brock
Washington Department of Fish and Wildlife – Eric Bartrand
City of Zillah
Penny Keys – Ecology SEA HQ



IN THE MATTER OF GRANTING A)	ORDER # 5117
WATER QUALITY)	Corps Reference No. 200601112
CERTIFICATION TO)	Place fill in wetlands and Konewock and Buena
Zillah Prairie, LLC)	ditches located in Yakima County, Washington.
in accordance with 33 U.S.C. 1341)	
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: Zillah Prairie, LLC
4319 W Dravus Street
Seattle, WA 98199

On September 14, 2006, Zillah Prairie, LLC submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on {date of public notice}.

The proposed project entails placement of fill in 1.83 acres of emergent wetlands and Konewock and Buena ditches to construct a mixed-use commercial and residential development and a 9-hole golf course on a 224 acre site. Three lakes will be excavated for fill material and to serve as amenities for the housing development. Several smaller lakes will be excavated as part of the golf course. Twenty-seven hundred (2700) linear feet of Buena ditch will be relocated. The point of discharge from both ditches after their confluence will leave the site through the culvert underneath Interstate 82 and thence into the Yakima River. The site is located east of Buena Road and north of I-82 within the City of Zillah in Sections 22 and 27, in Township 11 N, Range 20E, WRIA No. 37 in the Yakima River Watershed.

Mitigation will include construction of a new ditch (1.31 acres) and creation of 0.76 acres of wetland contiguous with the existing and new ditch.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §1311, 1312, 1313, 1316, and 1317 (FWPCA § 301, 303, 306 and 307);

2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

WATER QUALITY CERTIFICATION CONDITIONS:

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean Zillah Prairie, LLC, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Central Regional Office, Attn: Federal Permit Coordinator, 15 W. Yakima Avenue, Suite 200, Yakima, WA 98902. Any submittals shall reference Order No. 5117 and Corps No. 200601112.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on September 14, 2006. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of an updated JARPA Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.

5. This Order shall be rescinded if the US Army Corps of Engineers does not issue an Individual Section 404 or Nationwide Permit for this project
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins in wetlands at the project site or within two weeks after the Corps issues an Individual 404 permit for the site.
11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
12. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Water Quality

No Impairment of Water Quality

1. Lots adjacent to the lake shall be contoured so that water drains away from the lake. A lake homeowners association shall be formed which includes covenants about how to protect the lake. Covenants shall include (in part) instructions that the area within 25 feet of the lake shall be completely vegetated with native or non invasive species and that no chemicals shall be used within 25 feet of the lake edge. Application of noxious weed control chemicals is allowed but shall be used only as a last resort after hand pulling or biological methods are used.

Water Quality Monitoring

1. The applicant shall submit an acceptable Water Quality Monitoring Plan for the site (surface and groundwater) to Ecology for review and approval before December 31, 2007. The plan should include at a minimum, site surface water quality inflow and outflow data during high and low flows, and a plan for groundwater monitoring. The plan should include measurement of temperature, pH, and potential chemicals/pollutants that are expected to pass through the site or be used at the site. At a minimum, monitoring locations, frequency of monitoring and contingency plans that will be triggered if monitoring results show an exceedance of acceptable parameters shall be included.
2. A site Water Quality Monitoring Report shall be submitted to Ecology each year in June after construction begins until 5 years after final site build-out. At that time, a review of the site monitoring reports shall be conducted jointly by Ecology and the Monitoring Report authors to determine whether additional monitoring is needed to protect receiving waters.
3. A noxious weed control plan for the site shall be designed in consultation with the Yakima County Noxious Weed Board and submitted to Ecology by December 31, 2007. The plan shall include in part a schedule for routine, ongoing visual inspection of all waterways on site. The plan should include special attention to the eradication of parrotfeather and measures that will be taken to prevent its entry into the Yakima River.

C. Stormwater

1. A copy of the stormwater pollution prevention plan and grading plan that will be used on site for construction shall be provided to Ecology by October 31, 2007.

2. A typical cross section of the roadside grassy swale that will be constructed to contain stormwater in areas of the shallowest groundwater table depth shall be submitted to Ecology. The entity responsible for maintenance of the swale area shall be identified. If maintenance will be by individual lot owners, a plan of how the applicant will inform the private individuals of their responsibilities for proper swale maintenance should be included with the submission of the cross section.

D. Wetlands

1. A final wetland mitigation plan that is acceptable to Ecology and the Corps shall be on file by June 1, 2008. The mitigation plan shall include in part: final location and acreage of mitigation wetlands, buffer management strategies, mitigation wetland functional goals, vegetation plant list, planting densities, planted plant survival goals of at least 80 percent, monitoring strategy for a 10 year period, and contingency plans if goals are not met. Mitigation for buffers that are less than 25 feet should be included in buffer impact calculations and in the compensatory mitigation plan. Buffer mitigation should focus on functions that are most likely to be lost in the area of the reduced buffers.
2. Wetland mitigation shall occur at a ratio of 2:1. In areas where wetland buffers are proposed to be less than 80 feet from golf course playing fields, the golf course playing fields shall be narrowed to the greatest extent feasible to increase the wetland buffer width. A one-foot berm at the upland edge of the wetland buffer shall be incorporated into the design to help keep sediment and other pollutants from moving via surface water into adjacent wetlands. No mowing or chemical use (except hand delivered spot control of noxious weeds) shall occur within the buffer. Native plants which discourage human intrusion (such as native roses and hawthorns) shall be planted in the buffer per an acceptable wetland mitigation plan.
3. An 80-foot vegetated buffer zone shall be maintained between all residential lot lines and existing or constructed mitigation wetland edges. Native plants shall be planted in the buffer zones unless the applicant can show that non-native plants will provide greater wetland function protection than the native plants and that the non-native plants are not invasive. No mowing or chemical use (except hand delivered spot control of noxious weeds) shall occur within the buffer. Native plants shall be planted in the buffer per an acceptable wetland mitigation plan."

4. **Utility lines (water, sewer, power, etc.) shall be installed in such a way as to not create artificial drains from wetlands or streams. Within wetland areas, underground utility corridors shall have pipe collars or other structures to prevent the loss of water from wetlands or stream corridors. The applicant will provide Ecology with a site plan which shows the location of all utility lines and the location of collars or other mechanisms used to prevent artificial draining of wetland or stream corridors.**

E. Construction Conditions

1. The applicant shall comply with conditions Hydraulic Project Approval (HPA) 106843-1 issued by the Washington Department of Fish and Wildlife on September 28, 2006. Conditions of note include:
 - Culverts shall be installed in the dry or in isolation from flowing waters
 - The work area shall be isolated from the stream during construction of the pond, the diversion system and the return flow system.
 - Within seven calendar days of project completion and prior to the initial filling of the of the ponds, all disturbed areas shall be protected from erosion using vegetation or other means. Within one year of project (pond and stream areas) completion, the banks shall be revegetated with native or other approved woody species. Vegetative cuttings shall be planted at a maximum interval of three feet (on center) and maintained as necessary for three years to ensure 80 percent survival.
 - Ponds shall be constructed so the outflow temperature is not harmful to fish life
 - Erosion control methods shall be used to prevent silt-laden water from entering the stream. These may include, but are not limited to, straw bales, filter fabric, temporary sediment ponds, check dams of pea gravel-filled burlap bags or other material, and/or immediate mulching of exposed areas.

If there appear to be any conflicts with conditions in the HPA and final wetland mitigation plan directives, the applicant shall arrange a conference call or meeting with the agencies to discuss the conflicts.

F. Timing Requirements

This Order is valid until all requirements included in this and above required documents are met.

G. Notification Requirements

1. Notification shall be made to Ecology's Federal Project Coordinator in accordance with condition A.2 above immediately following a violation of the state water quality standards or any condition of this Order.
 - a. At least 10 days prior to the pre-construction meeting
 - b. At least 10 days prior to the onset of any work on site

H. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. Any work that is out of compliance with the provisions of this Order, or producing conditions that are causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters is prohibited. If such work occurs, the Applicant shall:
 - a. Cease operations at the location of the violation;
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage;
 - c. In the event of finding distressed or dying fish, collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the Applicant receives further instructions from Ecology. Ecology may require analyses of these samples before allowing the work to resume
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible. This work shall take precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials;
 - e. Immediately notify Ecology's Central Regional Spill Response Office at 509-575-2490 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

- f. Immediately notify the National Response Center at 1-800-424-8802 for spills to water.

If at any time, the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify Ecology's Central Regional Spill Response Office at 509-575-2490.

I. Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: <http://www.eho.wa.gov>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated 9-13-07 at Yakima County, Washington.

A handwritten signature in cursive script, appearing to read "Jeff Lewis", is written over a horizontal line.

Jeffrey Lewis, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington